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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,	)	CR. NO. 05-00261 HG
	)	
Plaintiff,	)	DEFENDANT'S
	)	SUPPLEMENTAL
vs.	)	MEMORANDUM IN SUPPORT
	)	OF MOTION FOR SEVERANCE
JAMES TROIANO, (01)	)	OF DEFENDANTS
	)	
Defendant.	)	
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DEFENDANT'S SUPPLEMENTAL MEMORANDUM IN SUPPORT OF  
MOTION FOR SEVERANCE OF DEFENDANTS

Defendant JAMES TROIANO (Troiano) by and through his counsel,  
Todd Eddins, reasserts the premises of his motion for severance of  
defendants filed on February 23, 2006 and the arguments proffered at the  
hearing on the motion on March 17, 2006. As the United States'

supplemental opposition to defendant Troiano's motion for severance of defendants primarily relates to issues involving co-defendant Toki, Troiano will defer to Toki to with respect to the government's contentions in its memorandum.

Troiano, however, does submit that permitting Toki's statements through Detective Johnson's testimony violates Troiano's sixth amendment rights based on the dictates of Crawford v. Washington, 541 U.S. 36, 124 S.Ct. 1354 (2004). Bruton and its progeny, including the cases cited by the government, did not contemplate the nearly bright-line confrontation rule established in Crawford.

In Crawford, the Court ruled that the admission of an unavailable declarant's testimonial statements without opportunity for confrontation violates the sixth amendment. "Where testimonial evidence is at issue, however, the Sixth Amendment demands what the common law required: unavailability and a prior opportunity for cross-examination." 124 S.Ct. at 1374. "Statements taken by police officers in the course of interrogations are testimonial under even a narrow standard." Id. at 1364.

Assuming Toki does not testify, he is unavailable. Detective Johnson will present testimonial statements elicited from Toki during an interrogation. Troiano has not had the prior opportunity to cross-examine

Toki on the statements. Therefore, Toki's statements are precluded by Crawford and the Sixth Amendment. Troiano submits that it is immaterial that the government will endeavor to limit the damage to Troiano through, for example, limiting instructions. Instead, the key inquiry with respect to the testimonial statements is whether Troiano's right to confrontation is safeguarded. Clearly, it is not, and Troiano contends that the testimony should be precluded.

DATED: Honolulu, Hawaii March 21, 2006

/s/ Todd Eddins

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TODD EDDINS